

REMARKS

The Examiner is requiring restriction between the following groups of inventions under 35 U.S.C. 121 and 372.

Group I wherein A is a benzene;

Group II wherein A is a pyridine; and

Group III wherein A is a thiophene.

Applicants elect with traverse, Group I wherein A is a benzene.

Restriction is only proper if the claims of the restricted groups are independent or patentable distinct and there would be a serious burden placed on the Examiner if the restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinctions (M.P.E.P. §803). Moreover, when making a unity of invention requirement in a National Stage Application, the Examiner has the burden of explaining why each group lacks unity with respect to each other group (i.e., why there is no single inventive concept), and specifically, describing the unique and special feature of each group (M.P.E.P. §1893.03(d)).

Applicants respectfully traverse the restriction requirement on the grounds that the Examiner did not carry the burden of providing any reasons and/or examples to support any conclusion that the groups lack unity of invention.

The Examiner alleges that inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2 they lack the same or corresponding special technical features required by this rule. Specifically, the compounds defined in the claims lack a significant structural element qualifying as the special technical feature that defines a contribution over the prior art. The compounds claimed contain a pyridine group which does not define a contribution over the prior art. The

substituents on the structure vary extensively and when taken as a whole result in vastly different compounds.

Applicants traverse on the grounds that the claimed compounds do contain the “special technical features” requirement of PCT Rule 13.2 in that all of the claimed compounds require the specific derivative of 1-N-aminobenzimidazole. The Examiner alleges that all of the compounds contain a pyridine group. However, she has not shown that this pyridine group does not define a contribution over the prior art as required by PCT Rule 13.2. Again, Applicants contend that since all of the compounds pertain to 1-N-aminobenzimidazole derivatives, they do contain novel compounds which are a contribution over the prior art.

The Examiner further cites U.S. Rule 37 C.F.R. 1.475(b) which in affect requires that National Stage Applications containing claims to different categories of invention will be considered to have unity if the claims are drawn only to one of the following combinations which include a product and a process specifically adapted for the manufacture of said product. In furtherance of this Rule, the Examiner requests that if Group I invention is elected (which Applicant has done) that the Applicant elect one process of preparing this product. To reply to this request, the Applicants elect the process of currently amended Claim 8 which recites a method for the production of a medicine incorporating into a pharmaceutically acceptable carrier the compound according to claim 1. Applicants respectfully request that the Examiner examine the process recited in claim 8 with Group I invention.

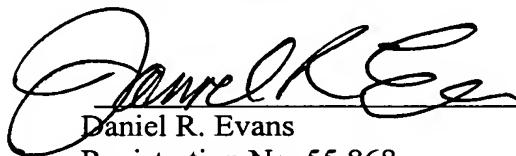
Applicants further point out that the International Search Authority searched all of the inventions; and therefore, it would appear not to provide an undue search burden on the Office if all the groups were examined in this application.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain this restriction requirement and withdrawal of this requirement is respectfully requested.

This application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Respectfully submitted,

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